FILE COPY

FILED
NOV 28 1931
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 171.

FIRST NATIONAL BANK OF BOSTON, EXECUTOR OF THE ESTATE OF EDWARD H. HASKELL, DECEASED,

Appellant,

vs.

STATE OF MAINE,

Appellee.

BRIEF FOR THE STATE OF MINNESOTA AS AMICUS CURIAE.

HENRY N. BENSON,
Attorney General of the State of Minnesota,
JOHN F. BONNER,
WILLIAM K. MONTAGUE,
Assistant Attorneys General,
Counsel for the State of Minnesota as Amicus Curiae.

Hayward Brief Co., 601-7 Fourth Ave. So., Minneapolis

INDEX.

	Page
Statement of the case	2
Summary of argument	2
Question presented	4
The Law	4
I. This Court has clearly committed itself in favor of the right of the state of the corporation's domicile to levy an inheritance tax on the transfer by death of shares of stock therein owned by non-residents	6
II. This Court should not commit itself to any rule limiting to a single state the right to levy a succession tax on the transfer of shares of stock in a corporation	9
III. Before property can join in a universal succession it must pay a tax to the singular succession	20
IV. The real subject of this tax is the shifting of economic benefits and burdens of property from the dead to the living	21
Conclusion	22

CASES CITED.

Baker vs. Baker, Eccles & Co., 242 U. S. 394 6
Beidler vs. South Carolina, 282 U. S. 1 (9) 7, 9, 18, 19
Baldwin vs. Missouri, 281 U. S. 586 ..... 9, 18
Black vs. Zacharie & Co., 3 How. 483 7
Bristol vs. Washington County, 177 U. S. 133 8
Billings vs. Illinois, 188 U. S. 97 (104) 22
Corry vs. Baltimore, 196 U. S. 466 6
Cream of Wheat Co. vs. Grand Forks, 253 U. S. 325 13
C. B. & Q. Ry. vs. United States, 220 U. S. 559 15
Frick vs. Pennsylvania, 268 U. S. 473 ..... 6, 13, 14, 20
Farmers Loan and Trust Co. vs. Minnesota, 280 U. S. 204, 213 ..... 9, 11, 12, 17
Fort Smith Lumber Co. vs. Arkansas, 251 U. S. 532 13
Glenn vs. Liggett, 135 U. S. 533 8
Hellmich vs. Hellman, 276 U. S. 233 13
In Re Lund Estate, 236 N. W. 626 5
In Re Bronson, 150 N. Y. 1 6
John Ii Estate, Limited, vs. Brown, 235 U. S. 342 15
Kidd, Dater and Price Co. vs. Musselman Grocer Co., 217 U. S. 461 ..... 15, 16
Knowlton vs. Moore, 178 U. S. 41 (54) 21
Liverpool & L. & G. Ins. Co. vs. Orleans Assessors, 221 U. S. 346 8
McLaughlin vs. Cluff, 42 A. L. R. 347, pages 365-366 8
Magoun vs. Illinois Trust and Savings Bank, 170 U. S. 283 (293). 12

Maxwell vs. Bugbee, 250 U. S. 525 ..... 13, 21
Marshall vs. B. & O. Ry. Co., 16 How. 314 15
Mager vs. Grima, 8 How. 490 20
New Orleans vs. Stempel, 175 U. S. 309 8
New York Life Ins. Co. vs. Deer Lodge County, 231 U. S. 495 ... 15, 16
Pullman's Car Company vs. Pennsylvania, 141 U. S. 18 (22) 20
Rhode Island Trust Co. vs. Doughton, 270 U. S. 69 ..... 6, 7, 14
Rogers vs. Hennepin County, 240 U. S. 184 6
State ex rel. Graff vs. Probate Court, 128 Minn. 371 5
State ex rel. Bodman vs. Probate Court, 142 Minn. 415 5
Swiss Oil Co. vs. Shanks, 273 U. S. 407 13
Saltonstall vs. Saltonstall, 276 U. S. 260 22
Travelers Ins. Co. vs. Connecticut, 185 U. S. 364 6
Tappan vs. Merchants Nat'l Bank, 19 Wall. 490 6
Tyler vs. U. S., 281 U. S. 497 22
United States vs. Harvey Steel Co., 227 U. S. 165 15
Vail vs. Arizona, 207 U. S. 201 16
Wright vs. Columbus, Hoeking Valley & Athens Ry. Co., 176 U. S. 481 15

STATUTES CITED.

Laws 1905, Chapter 288, Sections 1 and 11 5
Laws 1911, Chapter 209, and Chapter 372, Section 1 5
Mason's Minnesota Statutes of 1927, Section 2292 4
Mason's Minnesota Statutes of 1927, Section 2302 4

TEXT BOOKS.

Essays in Taxation, Tenth Edition, 1925, page 123 11
Story Conflict of Laws (8th Ed.), Section 583 7

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 171.

FIRST NATIONAL BANK OF BOSTON, EXECUTOR OF THE ESTATE OF EDWARD H. HASKELL, DECEASED,

Appellant,

vs.

STATE OF MAINE,

Appellee.

Motion for Leave to File Brief as Amicus Curiae.

May it please the Court:

The undersigned, as counsel for the State of Minnesota, respectfully move this Honorable Court for leave to file the accompanying brief in this action as *amicus curiae.*

HENRY N. BENSON,
Attorney General of the State of Minnesota,
JOHN F. BONNER,
WILLIAM K. MONTAGUE,
Assistant Attorneys General,
Counsel for the State of Minnesota as Amicus Curiae.

Supreme Court of the United States

OCTOBER TERM, 1931.

No. 171.

FIRST NATIONAL BANK OF BOSTON, EXECUTOR OF THE ESTATE OF EDWARD H. HASKELL, DECEASED, *Appellant*,

vs.

STATE OF MAINE,

Appellee.

STATEMENT OF THE CASE.

From the agreed facts it appears that Edward H. Haskell died testate, a resident of Massachusetts, January 8, 1924. At his death he owned stock in the Great Northern Paper Company, a corporation organized and existing under the laws of the State of Maine. His will was probated in Massachusetts, which levied and collected a transfer tax on legacies and distributive shares, made up in greater part of the proceeds of said stock. The State of Maine claimed a tax on the transfer of his shares of stock in the Great Northern Paper Company, which tax, after deducting therefrom the amount paid the State of Massachusetts, amounted to $30,139.88 (R. 5-7). Substantially all of the Great Northern Paper Company's property, including its real estate and mills, are located in Maine (R. 10).

SUMMARY OF ARGUMENT.

1. Minnesota has a substantial pecuniary interest in the question presented in this case.

2. This court in an unbroken line of cases has held that jurisdiction to levy a succession tax on the transfer of shares of stock owned by a resident of one state in a corporation organized and owning property in another, inheres in the state of the domicile of the corporation.

3. Jurisdiction to impose a succession tax also exists at the domicile of the decedent.

4. Both the state of the domicile of the corporation and the state of the domicile of the owner should be permitted to levy a succession tax on the transfer of corporate stock.

5. An observance of the doctrine of *stare decisis* precludes this court from limiting the right to levy a succession tax on a transfer of shares of stock owned by a resident of one state in a corporation organized and owning property in another at the domicile of the decedent.

6. The nature and character of a shareholder's interest in a corporation makes impossible the adoption of any rule of single situs of corporate shares for purposes of taxation.

7. No provision of the constitution of the United States is violated by requiring shares of stock to pay a tax in the state of the singular succession before the interest represented by such shares of stock can join the universal succession.

8. The shifting of the economic burdens and benefits of property which is the subject of the succession tax may occur in as many states as have jurisdiction over the property.

9. The tax paid the state of the domicile of the corporation should be deducted from the value of the stock on which the tax to be paid the state of the domicile of the owner is imposed.

QUESTION PRESENTED.

The State of Minnesota is interested solely in the question whether a statute imposing an inheritance tax on the transfer of shares of stock owned by a non-resident in a corporation created by the taxing state and owning property and doing business within that state violates the due process clause of the Fourteenth Amendment to the Constitution of the United States.

THE LAW.

The Minnesota statute authorizing the imposition of this tax is identical in effect with the statutes of the State of Maine involved in the case at bar. Our statute is as follows:

Section 2292, *Mason's Minnesota Statutes of 1927*, provides:

> "A tax shall be and is hereby imposed upon any transfer of property, real, personal or mixed, or any interest therein, * * * to any person, association, corporation * * * in the following cases:
>
> * * * * * * * * * *
>
> "(2) When a transfer is by will or intestate law, of property within the state or within its jurisdiction and the decedent was a non-resident of the state at the time of his death."

Section 2302, in part, provides:

> "No corporation organized under the laws of the State of Minnesota shall transfer on its books any shares of its capital stock standing in the name of a non-resident decedent or in trust for a non-resident decedent, without the consent of the attorney general first procured as hereinbefore provided for. Any cor-

poration violating the provisions of this section shall be liable to the state for the amount of any tax due to the state on a transfer of any such shares of stock. * * *"

Statutes similar in import and intent were enacted in 1905 (Sections 1 and 11, Chapter 288, Laws 1905). They were enacted in their present form in 1911 (Section 1, Chapter 372, and Chapter 209, Laws 1911).

Under and pursuant to the terms thereof Minnesota has collected inheritance taxes for more than twenty-five years on the transfer of stock owned by non-residents in Minnesota corporations.

In *State ex rel. Graff vs. Probate Court,* 128 Minn. 371 (decided in 1915), *State ex rel. Bodman vs. Probate Court,* 142 Minn. 415 (decided in 1919), and *In Re Lund Estate* (not yet officially reported, decided in 1931), 236 N. W. 626, the Supreme Court of this state upheld the state's right to tax as against the objection raised that such taxation violated the due process clause of the Constitution of the United States.

During the two years last past Minnesota has collected from the estates of non-residents owning property therein $252,517.06, of which ninety-five per cent has been derived from the transfer of stock owned by non-residents in Minnesota corporations.

There is now pending before the Supreme Court of Minnesota a case involving a tax of $243,000 levied by that state on the transfer by death of shares of stock owned by a non-resident in the Great Northern Railway Company, a Minnesota corporation.

Minnesota, therefore, has a substantial pecuniary interest in the controversy involved in the case at bar.

I.

This Court Has Clearly Committed Itself in Favor of the Right of the State of the Corporation's Domicile to Levy an Inheritance Tax on the Transfer by Death of Shares of Stock Therein Owned by Non-Residents.

In an unbroken line of decisions this court has held that the state of the corporation's domicile, consistently with the due process clause of the Fourteenth Amendment, may levy an inheritance tax on the transfer by death of shares of stock owned by a non-resident in a domestic corporation.

Rhode Island Trust Co. vs. Doughton, 270 U. S. 69.
Frick vs. Pennsylvania, 268 U. S. 473.
Baker vs. Baker, Eccles & Co., 242 U. S. 394.

Similarly, this court has held that a property tax may be levied by the state of the domicile of the corporation on shares of stock therein owned by a non-resident.

Corry vs. Baltimore, 196 U. S. 466.
Rogers vs. Hennepin County, 240 U. S. 184.
Travelers Ins. Co. vs. Connecticut, 185 U. S. 364.
Tappan vs. Merchants Nat'l Bank, 19 Wall. 490.

These decisions are based upon the principle that the interest of a shareholder is a property interest, localized within the state of the corporation's domicile. This interest constitutes a species of tangible property different from an ordinary debt or one evidenced by a bond.

In Re Bronson, 150 N. Y. 1, in which the court say (page 8):

> "The attitude of a holder of shares of capital stock is quite other than that of a holder of bonds towards

the corporation which issued them. While the bondholders are simply creditors, whose concern with the corporation is limited to the fulfillment of its particular obligation, the shareholders are persons who are interested in the operation of the corporate property and franchises, and their shares actually represent undivided interests in the corporate enterprise. * * * Each share represents a distinct interest in the whole of the corporate property. * * * The attempt to tax a debt of the corporation to a non-resident of the state, as being property within the state, is one thing, and the imposition of a tax upon the transfer of any interest in or right to the corporate property itself is another thing. The corporation is the creation of state laws, and those who become its members, as shareholders, are subject to the operation of those laws, with respect to any limitation upon their property rights, and with respect to the right to assess their property interests for purposes of taxation."

It is an interest distinct from the interest of a creditor in a corporation.

Beidler vs. South Carolina, 282 U. S. 1 (9).

In *Rhode Island Trust Company vs. Doughton, supra* (page 82), it is said that the shareholder's interest is

"* * * a distinct independent interest or property, held by the shareholder like any other property that may belong to him."

Questions relating to shares of stock are to be determined by the laws of the state of the corporation.

Story Conflict of Laws (8th Ed.), Section 583.

Black vs. Zacharie & Co., 3 How. 483.

The rights of a Massachusetts stockholder in a Virginia corporation must be determined by the laws of Virginia.

Glenn vs. Liggett, 135 U. S. 533.

The state cases holding in favor of the right of the state of the domicile of the corporation to tax transfers by death of shares of stock therein owned by a non-resident are collected and arranged in alphabetical order in note to *McLaughlin vs. Cluff*, 42 A. L. R. 347, on pages 365-366.

A reference to the cases collected therein disclose that fifteen states have decided in favor of the right of the state of the domicile of the corporation to tax under circumstances similar to those presented by the case at bar. So far as we are advised, no state court of last resort has held to the contrary.

Shares of stock thus owned may be said to have a business situs within the state of the corporation's domicile and thus become integral parts of some local business, within the doctrine of the cases of *New Orleans vs. Stempel*, 175 U. S. 309; *Bristol vs. Washington County*, 177 U. S. 133; *Liverpool & L. & G. Ins. Co. vs. Orleans Assessors*, 221 U. S. 346.

The legal presumption is that the state where the corporation is organized is the state of its principal place of business. It is true that to evade taxes and for other purposes corporations are frequently organized in states where very little of their business is transacted. Where the stockholders, for some such purpose, have organized in such a state, it does not lie in their mouths to deny this business situs or to question the jurisdiction of that state to tax corporate shares or their transfer.

If they have such a business situs, there is no question as to the right of that state to tax. The only inquiry re-

maining would be "whether such securities can be taxed a second time at the owner's domicile."

Farmers Loan and Trust Co. vs. Minnesota, 280 U. S. 204, 213.

Although at the time of writing this brief we do not have the benefit of the briefs of the parties to this appeal, and others who may file briefs as *amici curiae,* we assume that the foregoing decisions will be thoroughly and exhaustively discussed therein. We shall, therefore, not attempt a discussion of them.

II.

This Court Should Not Commit Itself to Any Rule Limiting to a Single State the Right to Levy a Succession Tax on the Transfer of Shares of Stock in a Corporation.

In many quarters the case of *Farmers Loan and Trust Company vs. Minnesota* has been cited as announcing the determination of this court to establish by arbitrary fiat, if necessary, the doctrine of the single situs of all forms of property for purposes of taxation. We do not believe this court intends such a construction to follow from the language used.

In declaring the single situs for purposes of taxation of real property and tangible personal property, this court was on solid ground, considered both from the standpoint of law and economics. When legal fictions were disregarded there could be little doubt as to the state having jurisdiction over such property.

In extending that doctrine to debts and choses in action by *Farmers Loan and Trust Company vs. Minnesota; Baldwin vs. Missouri,* 281 U. S. 586, and *Beidler vs. South Caro-*

lina, 282 U. S. 1, while the problem presented was more difficult of solution than in the case of tangibles, the court could still be reasonably sure of the legal and economic soundness of its conclusion.

But if it is attempted to extend that principle to corporate stock, the court must, because of the inherent difficulty in determining the real nature of the economic interest represented by that stock, leave solid ground and proceed solely by arbitrary rule. No one can lay down any rule of single taxable situs of corporate stock which from either the legal or economic standpoint is universally or even generally sound. The question is too complex—the difficulties too great.

A New York resident may own an iron mine in Minnesota. If he dies it is clear that the transfer of it would be subject to a tax by Minnesota, and not by New York. To avoid that, he may organize a Minnesota corporation in which he holds all the stock, and transfer the mine to that corporation. Under appellant's contention, by that single act, not of the state, but of the taxpayer, he has reversed the situation, taken away from Minnesota and given to New York the right to tax the transfer. There has been no change whatever in the real situation from the standpoint of economics. The property—the economic interest transferred—is still protected by Minnesota and within its jurisdiction.

This illustration is not offered in justification of the right of the state of the corporation's domicile to tax in all cases, because, of course, the owner of the iron mine might have organized a New Jersey or Florida corporation. But it does show that in a very real sense the interest of the shareholder is not a chose in action but an interest in the corporation and its property, and that an attempt to establish

a single situs must of necessity rest on legal fictions and be established by arbitrary rule. No such rule can operate fairly as between the states. The "good relations between the states" referred to in the passage from the Federalist, quoted in *Farmers Loan and Trust Company vs. Minnesota*, cannot be promoted by it.

The opinion in that case refers to the fact that two-thirds of the states have adopted reciprocal exemption statutes. We respectfully submit that the question of the advisability of adopting such statutes is a legislative one and if the states cannot agree the result can only be effected by a constitutional amendment. * We do not believe that the language of the Fourteenth Amendment requires such a policy on the part of the states.

---

* The practical difficulty standing in the way of universal reciprocal tax exemption legislation as applied to inheritance taxation of intangibles is pointed out by Edwin R. A. Seligman, McVickar Professor of Political Economy in Columbia University in Essays in Taxation, Tenth Edition, 1925, page 123, as follows:

> "The committee (National Tax Association) recommended the adoption of the simple rule that the tax should be imposed, in the case of residents, upon all their intangible property and upon such tangible property as was within the state; but that in the case of non-residents the tax should be imposed only on the tangible property within the state. The New York law of 1911 followed this recommendation. The same principle was adopted by Massachusetts in 1912, and by some other Eastern states at about the same time. But the Western states were never reconciled to this method, and within a few years most of the Eastern states reverted to the old rule. Even had the principle prevailed, however, the possibility of double taxation would by no means have been eliminated. * * * Moreover, it is not very probable that the Western states which suffer from absentee ownership will agree to abandon the taxation of the securities of railroads owned in the East. As long as the present conditions continue it is most desirable that some interstate arrangement be effected whereby only such proportion of the securities be taxed as corresponds to the mileage or other criterion of property within the state."

In *Magoun vs. Illinois Trust and Savings Bank*, 170 U. S. 283 (293), it is said:

> "* * * the rule [referring to the equal protection clause of the Fourteenth Amendment] prescribes no rigid equality and permits to the discretion and wisdom of the state a wide latitude as far as interference by this court is concerned. Nor with the impolicy of a law has it concern. Mr. Justice Field said in *Mobile County vs. Kimball*, 102 U. S. 691, that this court is not a harbor in which can be found a refuge from ill-advised, unequal and oppressive state legislation. And he observed in another case: 'It is hardly necessary to say that hardship, impolicy or injustice of state laws is not necessarily an objection to their constitutional validity.'"

Taxation of property in more than one state may produce a hardship. But it is a situation which the taxpayer brings on himself by his method of doing business. State lines are very real things in our system of government, and, until the courts disregard them altogether, when a taxpayer's economic interests overlap them, he is bound to be in some difficulty. From a constitutional standpoint, the evils flowing from such difficulties are far less than those flowing from the arbitrary adoption of any single situs doctrine justified neither by law nor by economics.

Were it not for the language used by the court in *Farmers Loan and Trust Co. vs. Minnesota, supra*, concerning the economic inadvisibility of multiple taxation, it would not have occurred to anyone that the taxation of the transfer by death of shares of stock in a corporation domiciled in one state, owned by a resident of another, is contrary to the due process clause of the Fourteenth Amendment.

Theretofore, this court had held that the fact that two states, acting independently of one another, taxed the same property on transfer, furnished no ground upon which the taxpayer could attack the constitutionality of the tax as contrary to the due process clause of the Fourteenth Amendment.

Fort Smith Lumber Co. vs. Arkansas, 251 U. S. 532.
Cream of Wheat Co. vs. Grand Forks, 253 U. S. 325.
Hellmich vs. Hellman, 276 U. S. 233.
Swiss Oil Co. vs. Shanks, 273 U. S. 407.
Rhode Island Trust Co. vs. Doughton, 270 U. S. 69.
Frick vs. Pennsylvania, 268 U. S. 473.
Maxwell vs. Bugbee, 250 U. S. 525.

In *Cream of Wheat Company vs. City of Grand Forks, supra,* this court had under consideration the constitutionality of the franchise tax levied by the state of North Dakota upon a corporation organized and existing by virtue of its laws. This tax was levied upon the privilege of being a corporation. All of its business was done outside of the state of North Dakota, and all of its property, tangible and intangible, was located outside of that state. The court say (page 328):

> "The contentions are that the Supreme Court of North Dakota erred in holding that the tax here in question was a franchise tax; that it was in reality a property tax upon intangible property; that the company's intangible property must be deemed to have been located where its tangible property was; and that in taxing property beyond its limits North Dakota violated rights guaranteed by the Fourteenth Amendment. * * * The limitation imposed by the Fourteenth Amendment is merely that a state may not tax a resident for prop-

erty which has acquired a permanent situs beyond its boundaries. * * * Counsel for the company direct our attention to cases * * * which hold that a state may tax a foreign corporation not only on the value of its tangible property within the state but also on that proportion of its entire intangible property which is fairly represented by and must be included, in order to place a just value on the tangible property located and the business transacted there. The conclusion drawn by them is that the situs of the intangible property must be with the tangible; otherwise, they say, we must hold that it is in two places at once and that it may be subjected to double taxation. *To this it is sufficient to say that the Fourteenth Amendment does not prohibit double taxation.*" (Italics ours.)

In *Rhode Island Trust Co. vs. Doughton, supra*, this court in holding that North Carolina could not tax the devolution of shares of stock owned by a resident of Rhode Island in a New Jersey corporation, say (83):

"North Carolina cannot control the devolution of New Jersey shares. That is determined by the laws of Rhode Island where the decedent owner lived or by those of New Jersey, *because the shares have a situs in the state of incorporation.*" (Italics ours.)

In *Frick vs. Pennsylvania*, 268 U. S. 474 (497), the court say:

"The decedent owned many stocks in corporations of states, other than Pennsylvania, which subjected their transfer on death to a tax and prescribed means of enforcement which practically gave those states the status of lienors in possession. As those states had created the corporations issuing the stocks, they had power to

impose the tax and to enforce it by such means, irrespective of the decedent's domicile and the actual situs of the stock certificates. Pennsylvania's jurisdiction over the stocks necessarily was subordinate to that power. Therefore to bring them into the administration in that state it was essential that the tax be paid. The executors paid it out of moneys forming part of the estate in Pennsylvania and the stocks were thereby brought into the administration there. We think it plain that such value as the stocks had in excess of the tax is all that could be regarded as within the range of Pennsylvania's taxing power. *Estate of Henry Miller,* 184 Cal. 674, 683. So much of the value as was required to release the superior claim of the other states was quite beyond Pennsylvania's control."

Unless the doctrine of *stare decisis* be entirely abrogated, the cases heretofore cited in this subdivision of this brief preclude this court from deciding that two states, having jurisdiction of the subject of the tax, may not exact a tax on the same transfer. The principle of *stare decisis* has many times been recognized by this court as a salutary principle of law.

New York Life Ins. Co. vs. Deer Lodge County, 231 U. S. 495.

John Ii Estate, Limited, vs. Brown, 235 U. S. 342.

C. B. & Q. Ry. vs. United States, 220 U. S. 559.

Wright vs. Columbus, Hocking Valley & Athens Ry. Co., 176 U. S. 481.

Kidd; Dater and Price Co. vs. Musselman Grocer Co., 217 U. S. 461.

United States vs. Harvey Steel Co., 227 U. S. 165.

Marshall vs. B. & O. Ry. Co., 16 How. 314.

In *New York Life Insurance Co. vs. Deer Lodge County, supra* (502), it is said:

> "If we consider these cases numerically, the deliberation of their reasoning, and the time they cover, they constitute a formidable body of authority and strongly invoke the sanction of the rule of *stare decisis*. This we especially emphasize, for all of the cases concerned, as the case at bar does, the validity of state legislation, and under varying circumstances the same principle was applied in all of them. *For over forty-five years they have been the legal justification for such legislation. To reverse the cases, therefore, would require us to promulgate a new rule of constitutional inhibition upon the states and which would compel a change of their policy and a readjustment of their laws. Such result necessarily urges against a change of decision.*" (Italics ours.)

> "* * * *Stare decisis* is a wholesome doctrine."
> *Vail vs. Arizona*, 207 U. S. 201.

In *Kidd, Dater and Price Co. vs. Musselman Grocer Co.*, 217 U. S. 461, quoting from the syllabus, it is said:

> "Where this court has held a state statute constitutional it will follow that decision in a case involving the constitutionality of a statute of another state which fundamentally is similar and which is attacked on the same ground by persons similarly situated."

The case at bar furnishes the strongest reasons for the application of this principle. Most of the states of the union have statutes permitting the taxation of shares of stock owned by non-residents in domestic corporations. The state of the domicile of the decedent has universally levied a tax on

this same transfer. Until the case of *Farmers Loan and Trust Company vs. Minnesota,* this court had firmly adhered to the principle that no constitutional barrier was raised against double taxation. A tremendous upheaval and much agitation and unrest will follow a construction of the Fourteenth Amendment, which will result in a departure from this principle.

In *Farmers Loan and Trust Company vs. Minnesota,* this court, in holding that the protection which Minnesota affords the holder of bonds, issued by one of its governmental subdivisions, is not sufficient to justify that state in taxing the transfer by death of those securities when owned by a non-resident, uses the following language (211-212):

> "* * * We think the general reasons declared sufficient to inhibit taxation of them [tangibles] by two states apply under present circumstances with no less force to intangibles with taxable situs imposed by due application of the legal fiction. * * * We have determined that in general intangibles may be properly taxed at the domicile of their owner and we can find no sufficient reason for saying that they are not entitled to enjoy an immunity against taxation at more than one place similar to that accorded to tangibles."

This statement is dicta, as a decision of the point involved (whether a debt is property within the jurisdiction of the debtor's domicile) did not require that this court adopt a single situs for the taxation of intangibles. That the court has not committed itself to that doctrine is evidenced from the following language in the same opinion, to which we have heretofore called attention (213):

> "*New Orleans vs. Stempel,* 175 U. S. 309; *Bristol vs. Washington County,* 177 U. S. 133; *Liverpool & L. &*

G. Ins. Co. vs. Orleans Assessors, 221 U. S. 346, recognize the principle that choses in action may acquire a situs for taxation other than at the domicile of their owner if they have become integral parts of some local business. The present record gives no occasion for us to inquire whether such securities can be taxed a second time at the owner's domicile."

Mr. Justice Stone, while concurring in the opinion that Minnesota had no jurisdiction to tax this transfer, did not concur in so much of the opinion as casts doubt on the constitutionality of double taxation. On page 215, he said:

"Hitherto the fact that taxation is 'double' has not been deemed to affect its constitutionality and there are, I think, too many situations in which a single economic interest may have such legal relationships with different taxing jurisdictions as to justify its taxation in both, to admit of our laying down any constitutional principle broadly prohibiting taxation merely because it is double, at least until that characterization is more precisely defined.

"It seems to me to be unnecessary and undesirable to lay down any doctrine whose extent and content are so dubious. Whether it is far-reaching enough to overturn those cases which, in circumstances differing somewhat from the present, have been regarded as permitting taxation in more than one state, reaching the same economic interest, is so uncertain as to suggest doubts of its trustworthiness and utility as a principle of judicial decision." (Citing several cases.)

The decision in so far as it holds that the situs of debts exists with the creditor and not with the debtor has been

followed in *Baldwin vs. Missouri*, 281 U. S. 586, and *Beidler vs. South Carolina*, 282 U. S. 1.

In the case of *Baldwin vs. Missouri, supra*, this court held that a deposit owned by a resident of Illinois in a Missouri bank could not be taxed by Missouri, nor could debts owing a resident of Illinois by a resident of Missouri be taxed by the latter, though some of the debts were secured by mortgages on land in Missouri, and though the evidences of indebtedness were physically within Missouri. This case does not hold that there can be but a single situs for the taxation of intangibles and that the state of the domicile of the decedent alone may tax, but merely that the state of the debtor's domicile has no jurisdiction to impose such tax.

Beidler vs. South Carolina, supra, involved the right of South Carolina to tax a debt owed by a South Carolina corporation to a non-resident. Although in that case the deceased owned shares of stock in a South Carolina corporation, a tax was paid South Carolina on their transfer and no question of jurisdiction of South Carolina to levy such a tax was raised.

As we read these cases, they hold that debts have a situs only at the domicile of the corporation, and that that state alone can tax their transfer by death. The obvious difference between the interest of a shareholder in a corporation and the interest of a creditor in the property and business of his debtor remove them as authority for the principle that the state of the domicile of the corporation may not tax the transfer by death of shares of stock owned by a non-resident.

III.

Before Property Can Join in a Universal Succession it Must Pay a Tax to the Singular Succession.

If the state of the domicile of the corporation has jurisdiction of the shares of stock therein, it may levy a tax and make the payment thereof a condition precedent to permitting these shares to join the universal succession at the domicile of the owner.

The law of the state of the domicile of the decedent operates in another state only by comity of the latter.

Frick vs. Pennsylvania (see quotation, *supra*, page 14).

In *Pullman's Car Company vs. Pennsylvania*, 141 U. S. 18 (22), the court say:

> "No general principles of law are better settled, or more fundamental, than that the legislative power of every state extends to all property within its borders, and that only so far as the comity of that state allows can such property be affected by the law of any other state."

In *Magoun vs. Grima*, 8 How. 490, this court in sustaining the constitutionality of an inheritance tax of the state of Louisiana, levying a tax of ten per cent on legacies when the legatee is not a citizen of the United States nor domiciled in Louisiana, say (493):

> "Now, the law in question is nothing more than an exercise of the power which every state and sovereignty possesses, of regulating the manner and term upon which property, real or personal, within its dominion may be transmitted by last will and testament or by inheritance; and of prescribing who shall and who shall not be capable of taking it."

In *Knowlton vs. Moore*, 178 U. S. 41 (54), speaking of the theory of an inheritance tax, the court say:

> "The tax is not upon the property in the ordinary sense of the term but upon the right to dispose of it, and it is not until it has yielded its contribution to the state that it becomes the property of the legatee."

In *Maxwell vs. Bugbee*, 250 U. S. 525, this court in upholding the right of the state of New Jersey to levy an inheritance tax on the transfer of property owned by a non-resident within its jurisdiction, which tax was measured by the ratio in value of such property to the entire estate, including real and personal property in another state, say (541):

> "The state is dealing in this instance not with the transfer of the entire estate, but only with certain classes of property that are subject to the jurisdiction of the state. It must find some rule which will adequately deal with this situation."

And on page 542:

> "The transfer of the non-resident's estate is taxed only so far as his estate is located within the jurisdiction and only so far as it comes within the description of * * * 'shares of stock of corporations of this state.'"

IV.

The Real Subject of This Tax Is the Shifting of Economic Benefits and Burdens of Property From the Dead to the Living.

The power to levy an inheritance tax depends upon the place where there occurs that shifting of the economic bur-

dens and benefits of the property which is the subject of the succession.

Saltonstall vs. Saltonstall, 276 U. S. 260.

Tyler vs. U. S., 281 U. S. 497.

This shifting may take place in jurisdictions other than that of the state in which the deceased was a resident.

In the case of shares of stock in a domestic corporation, Maine has determined that such shifting of ownership takes place in that state. That determination is both economically and legally sound. Can it be said that the due process clause of the Fourteenth Amendment is violated?

In *Billings vs. Illinois*, 188 U. S. 97 (104), the court say:

> "We must regard the power of the state over testate and intestate dispositions of property, its power to create and limit estates, and, as resulting, its power to impose conditions upon their transfer or devolution."

Similarly, the right to succeed completely to the deceased's interest in all his property may be made the subject of a tax by the state of the deceased's domicile, and the value which the shares possess after they have paid a tax to the state which gave the corporation life, protects its property and permits it to function, may be included in determining the value of the beneficiary's right of succession.

CONCLUSION.

This court should not reach a decision which would result in overruling all its previous decisions holding that the interest of a shareholder in a corporation is property within the jurisdiction of the state of the domicile of the corporation and subject to an inheritance tax upon the death of a non-resident owner. Neither should it hold that the state of

the domicile of the corporation alone can levy a tax under these circumstances.

The most equitable principle, no doubt, is that suggested by this court in the Frick case—that the state of the domicile of the corporation has the right to tax the transfer by death of shares of stock owned by a non-resident superior to that of the domicile of the owner; that the state of the domicile of the owner can tax the value of the stock in the corporation in excess of the amount of the tax paid the state of the corporation's domicile.

Respectfully submitted,

HENRY N. BENSON,
Attorney General of the State of Minnesota,
JOHN F. BONNER,
WILLIAM K. MONTAGUE,
Assistant Attorneys General,
Counsel for the State of Minnesota.